

RECORDATION NO. 26082 FILED

DEC 28 '05 3-04 PM
SURFACE TRANSPORTATION BOARD

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ELIAS C. ALVORD (1942)
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OF COUNSEL
URBAN A. LESTER

December 20, 2005

Mr. Vernon A. Williams
Secretary
Surface Transportation Board
Washington, D.C. 20423

Dear Mr. Williams:

Enclosed for recordation pursuant to the provisions of 49 U.S.C. Section 11301(a) are two (2) copies of a Memorandum of Net Railcar Lease, dated as of December 14, 2005, a primary document as defined in the Board's Rules for the Recordation of Documents.

The names and addresses of the parties to the enclosed document are:

Lessor:	Babcock & Brown Rail Funding LLC 885 Second Avenue New York, New York 10017
Lessee:	Coletto Creek Power, LP 101 Ash St. San Diego, California 92101

Mr. Vernon A. Williams
December 20, 2005
Page 2

A description of the railroad equipment covered by the enclosed document is:

125 BethGon III open top coal hopper railcars: CCTX 7001 – CCTX 7125.

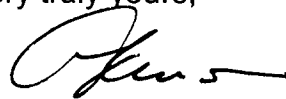
A short summary of the document to appear in the index is:

Memorandum of Net Railcar Lease.

Also enclosed is a check in the amount of \$33.00 payable to the order of the Surface Transportation Board covering the required recordation fee.

Kindly return stamped copies of the enclosed document to the undersigned.

Very truly yours,

A handwritten signature in black ink, appearing to read 'R. Alvord', with a long horizontal flourish extending to the right.

Robert W. Alvord

RWA/anm
Enclosures

DEC 28 '05

3-04 PM

MEMORANDUM OF NET RAILCAR LEASE

SURFACE TRANSPORTATION BOARD

THIS MEMORANDUM OF NET RAILCAR LEASE dated as of this 14th day of December, 2005, to that certain Master Net Railcar Lease between COLETO CREEK POWER, LP, a Texas limited partnership (the "Lessee"), pursuant to which Schedule No. 01 has been executed, is made by the Lessee and BABCOCK & BROWN RAIL FUNDING LLC, a Delaware limited liability company (the "Lessor" and, together with the Lessee, the "Parties").

KNOW ALL PERSONS BY THESE PRESENTS THAT:

WHEREAS, the Lessor and the Lessee entered into that certain Master Net Railcar Lease and Schedule No. 01 thereto effective as of December 14, 2005, (hereinafter as the same may from time to time be amended, modified or supplemented, the "Agreement"), covering the equipment listed on Exhibit A hereto (the "Cars");

WHEREAS, the Parties wish to show for the public record the existence of the aforesaid Agreement, and the respective interests therein of the Parties and accordingly the Parties have caused this memorandum to be executed by their respective duly authorized officers, as of the date first above written.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the Parties hereto, by this instrument the Lessor hereby leases and confirms the lease of the Cars to the Lessee in accordance with the terms and conditions of the Agreement, and the Lessee confirms and accepts such terms and conditions, which are incorporated by reference as if fully set forth herein.

This Memorandum of Net Railcar Lease may be executed by the Parties in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has caused this Memorandum of Net Railcar Lease to be executed by a duly authorized officer as of the day and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC, as Lessor

By: 

Name: Ross Sullivan

Title: Vice President

COLETO CREEK POWER, LP, as Lessee

By: Topaz Power Group GP, LLC, its General Partner

Name: _____

Title: _____

IN WITNESS WHEREOF, the undersigned has caused this Memorandum of Net Railcar Lease to be executed by a duly authorized officer as of the day and year first above written.

BABCOCK & BROWN RAIL FUNDING LLC, as Lessor

By: _____

Name: Ross Sullivan

Title: Vice President

COLETO CREEK POWER, LP, as Lessee

By: Topaz Power Group GP, LLC, its General Partner

William R. Engelbrecht

Name: William R. Engelbrecht

Title: Vice President

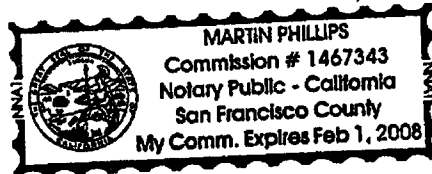
STATE OF CALIFORNIA)

) SS:

COUNTY OF SAN FRANCISCO)

On this 19 day of December, 2005 before me personally appears Ross Sullivan, to me personally known, who by me duly sworn, says that he is the Vice President of Babcock & Brown Rail Funding LLC (the "Company"), that the foregoing instrument was signed on behalf of the said Company by authority of its Officers, and he acknowledged that the execution of the foregoing instrument was the free act and deed of the said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Martin Phillips
Notary Public

[SEAL]

My Commission expires:

STATE OF _____)

) SS:

COUNTY OF _____)

On this _____ day of December, 2005 before me personally appears _____, to me personally known, who by me duly sworn, says that he/she is the _____ of Topaz Power Group GP, LLC (the General Partner of Coletto Creek Power, LP) (the "Company"), that the foregoing instrument was signed on behalf of the said Company by authority of its [Board of Directors], and he/she acknowledged that the execution of the foregoing instrument was the free act and deed of the said Company.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

[SEAL]

My Commission expires:

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

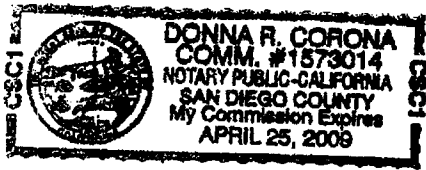
State of California

County of SAN DIEGO } ss.

On 12/19/05 before me, DONNA R. CORONA, A Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared WILLIAM ENGELBRECHT
Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Donna R. Corona
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Memorandum of Net RAIKAR Lease

Document Date: 12/14/05 Number of Pages: 4

Signer(s) Other Than Named Above: ROSS SULLIVAN

Capacity(ies) Claimed by Signer

Signer's Name: WILLIAM ENGELBRECHT

- ☐ Individual
☒ Corporate Officer — Title(s): VICE PRESIDENT
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing: TOPAZ POWER GROUP GP, LLC

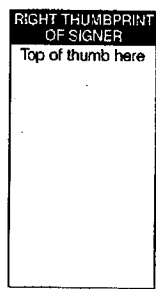


EXHIBIT A

<u>Quantity</u>	<u>Car Description</u>	<u>Reporting Marks and Numbers</u>
One Hundred Twenty-Five (125)	4520 CF Aluminum body rotary dump BethGon II Coal Porter railcars, AAR car type code J311, built in 2005 by FreightCar America, Inc.	CCTX 7001-7125, inclusive.

CERTIFICATION

I, Robert W. Alvord, attorney licensed to practice in the State of New York and the District of Columbia, do hereby certify under penalty of perjury that I have compared the attached copy with the original thereof and have found the copy to be complete and identical in all respects to the original document.

Dated: December 28, 2005

A handwritten signature in cursive script, appearing to read 'R. Alvord', written in black ink.

Robert W. Alvord